

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:

Assessment and Collection of Regulatory Fees
for Fiscal Year 2011

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MD Docket No. 11-76

COMMENTS OF VERIZON WIRELESS

The Commission should reject the proposal to impose a second fee collection method (revenues) on “CMRS Mobile Services” (or “CMRS”) providers that already pay on a per-unit basis. Such action would exceed the Commission’s limited Section 9 discretion to amend the Regulatory Fee Schedule. Further, the Notice¹ offers no justification for such a double taxation or for the overall level of assessment on CMRS providers and their customers.

The Commission is permitted to collect regulatory fees only in the amount authorized by Congress.² For FY 2011, Congress has required that the FCC collect \$335,794,000 through regulatory fees to recover the costs of its competition, enforcement, spectrum management, and consumer information activities.³ The FCC proposes to collect \$52,020,000 in FY 2011 from CMRS providers through a per unit or subscriber assessment of \$.18.⁴ The Commission also proposes to assess CMRS providers on their interstate telecommunications service (“ITSP”)

¹ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2011*, MD Docket No. 11-76, Notice of Proposed Rulemaking, FCC 11-68 (rel. May 3, 2011) (“Notice”).

² 47 U.S.C. § 159(a)(2).

³ Notice, ¶ 2.

⁴ *Id.* at Appendix A.

revenue. Section 9(b)(3)⁵ of the Act allows the FCC to make “permitted amendments” and Section 9(b)(1)(A)⁶ provides that fees “take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.” In 1997, the United States Court of Appeals for the District of Columbia Circuit held that Section 9(b)(3) affords the Commission only limited discretion in amending its fee schedule.⁷ In 1999, the D.C. Circuit further held that the Commission’s identification of “rulemaking proceedings or changes in law” warranting a permitted amendment is “a requisite for changes in regulatory fees.”⁸

But here, the Notice fails to explain how reclassifying CMRS licensees as subject to the ITSP regulatory fee would comply with Section 9(b)(1)(A) and (b)(3) of the Act. In addition, the FCC’s proposal lacks any meaningful explanation of how the revenues collected pursuant to the per unit CMRS fee is insufficient to cover the costs associated with regulating the CMRS industry. Rather, the FCC relies on an unsupported conclusion that its new approach is a “more equitable way” of assessing fees and cites fairness issues.⁹ Without a documented, data-driven explanation, the Commission would exceed its limited Section 9 discretion to amend the Regulatory Fee Schedule.

Declining ITSP revenues in and of itself are insufficient reason to impose ITSP on CMRS licensees. The Commission states its proposal will help reduce the impact of the reduction in ITSP revenue on all other regulatory fee categories.¹⁰ Declining revenues from one regulated

⁵ 47 U.S.C. § 159(b)(3).

⁶ *Id.* § 159(b)(1)(A).

⁷ *Comsat Corp. v. FCC*, 114 F.3d 223, 225, 227 (D.C. Cir. 1997).

⁸ *See PanAmSat Corp. v. FCC*, 198 F.3d 890, 893 (D.C. Cir. 1999) (*citing* *Comsat*, 114 F.3d at 227-28).

⁹ Notice, ¶ 8.

¹⁰ *Id.*, ¶ 9.

sector is not one of the justifications listed in the Act as sufficient to support expanding the regulatory fees paid by CMRS licensees. The FCC cannot justify making up shortfalls in other regulatory classifications through increasing fees on CMRS licensees. Accordingly, the FCC must reject the proposal to apply the ITSP fee to CMRS licensees.

The proposal is also invalid because it fails to provide support for the proposed fees since there is no evidence of an increase in the proportional cost of regulating the CMRS industry, or of the need for fees associated with CMRS ITSP regulation. For instance, in 2001 the FCC's expected FY 2001 Revenue from CMRS regulatory fees was \$27,404,520,¹¹ now -- a decade later -- the FCC seeks to collect almost twice that amount (\$52,020,000).¹² The Commission estimates that, as of December 31, 2010, there were 289 million CMRS subscribers.¹³ This is an increase of 8 million units from last year's estimate of 281 million.¹⁴ Accordingly, based on the Commission's own estimates, the number of CMRS subscribers had risen by 2.8 percent, yet the FCC proposes to keep the rounded FY 2011 regulatory fee at \$.18, resulting in a nearly \$2 million increase in total fees collected from the CMRS providers. The FCC has failed to provide any rationale for its proposed increase.

¹¹ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01-76, *Report and Order*, 16 FCC Rcd 13525 at 13573 (2001).

¹² Notice at Appendix A.

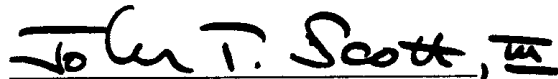
¹³ *Id.*

¹⁴ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, MD Docket No. 10-87, *Notice of Proposed Rulemaking*, 25 FCC Rcd 3918 (2010) at Appendix A.

For all of the reasons discussed herein, Verizon Wireless respectfully requests that the Commission not adopt the proposed, additional ITSP fee and require CMRS licensees to pay only the per unit fee.

VERIZON WIRELESS

By:

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line underneath the name.

John T. Scott, III
Vice President and Deputy General
Counsel – Regulatory Law

Michael P. Samsock
Counsel

Verizon Wireless
1300 I Street, N.W.
Suite 400 West
Washington, DC 20005
(202) 589-3768

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